

ASSEMBLY BILL

No. 520

Introduced by Assembly Member Parra

February 16, 2005

An act to amend Section 43003 of the Food and Agricultural Code, relating to civil administrative penalties.

LEGISLATIVE COUNSEL'S DIGEST

AB 520, as introduced, Parra. Civil administrative penalties: food and agriculture violations.

Under existing law, in lieu of civil prosecution the Secretary of Food and Agriculture or the County Agricultural Commissioner may levy a civil penalty against any person for a violation relating to the use of a California Grown seal on agricultural products of not more than \$500 for each violation.

This bill would authorize the secretary or the commissioner to levy a civil penalty against any person violating provisions relating to fruit, nut, and vegetable standards. The civil penalties would range from not more than \$500 or \$3,000 for first violations, as specified, to fines up to \$1,000 or \$5,000 for subsequent or other violations, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 43003 of the Food and Agricultural
- 2 Code is amended to read:
- 3 43003. (a) In lieu of civil prosecution, the ~~director~~ *secretary*
- 4 or the commissioner may levy a civil penalty against any person
- 5 violating ~~Section 43100 this division~~ or any regulation adopted

1 pursuant to its provisions. *Except as provided in subdivisions (b)*
2 *and (c), the civil penalty for each violation shall be, for a first*
3 *violation, a fine of not more than five hundred dollars (\$500) for*
4 *each violation. For a second or subsequent violation, the fine*
5 *shall be not less than one hundred dollars (\$100), nor more than*
6 *one thousand dollars (\$1,000).*

7 *(b) The secretary or the commissioner may, for a first*
8 *violation, levy a civil penalty not to exceed three thousand*
9 *dollars (\$3,000) for each violation of Section 42945, 42948,*
10 *42949, 42951, subdivision (b) of Section 43100, subdivision (b)*
11 *of Section 44971, Section 44972, subdivision (c) of Section*
12 *44974, or Section 44986. For a second or subsequent violation,*
13 *or for a violation involving avocados worth five hundred dollars*
14 *(\$500) or more, the fine shall be not less than two hundred fifty*
15 *dollars (\$250) nor more than five thousand dollars (\$5,000).*

16 *(c) The secretary or the commissioner may, for a first*
17 *violation, levy a civil penalty not to exceed five hundred dollars*
18 *(\$500) for each violation of Section 44973, 44982, 44983, 44984,*
19 *45031, 45034, or 45035. For a second or subsequent violation,*
20 *or for a violation involving avocados worth five hundred dollars*
21 *(\$500) or more, the fine shall be not less than two hundred fifty*
22 *dollars (\$250) nor more than five thousand dollars (\$5,000).*

23 ~~(b)~~

24 *(d) Before a civil penalty is levied, the person charged with the*
25 *violation shall receive notice of the nature of the violation and*
26 *shall be given an opportunity to be heard. This shall include the*
27 *right to review the evidence and a right to present evidence on*
28 *his or her own behalf.*

29 ~~(e)~~

30 *(e) The person fined may appeal to the ~~director~~ secretary*
31 *within 10 days of the date of receiving notification of the fine.*
32 *The following procedures apply to the appeal:*

33 *(1) The appeal need not be formal, but it shall be in writing*
34 *and signed by the appellant or his or her authorized agent, and*
35 *shall state the grounds for the appeal.*

36 *(2) Any party may, at the time of filing the appeal or within 10*
37 *days thereafter, present written evidence and a written argument*
38 *to the ~~director~~ secretary.*

39 *(3) The ~~director~~ secretary may grant oral arguments upon*
40 *application made at the time written arguments are filed.*

1 (4) If an application to present an oral argument is granted,
2 written notice of the time and place for the oral argument shall be
3 given at least 10 days before the date set therefor. The times may
4 be altered by mutual agreement.

5 (5) The ~~director~~ *secretary* shall decide the appeal on any oral
6 or written argument, briefs, and evidence that he or she has
7 received.

8 (6) The ~~director~~ *secretary* shall render a written decision
9 within 45 days of the date of appeal or within 15 days of the date
10 of oral arguments.

11 (7) On an appeal pursuant to this section, the ~~director~~
12 *secretary* may sustain, modify by reducing the amount of the
13 fine, or reverse the decision of the commissioner. A copy of the
14 ~~director's secretary's~~ decision shall be delivered or mailed to the
15 appellant and the ~~commissioner~~ *commissioner*.

16 (8) Review of the decision of the ~~director~~ *secretary* may be
17 sought by the appellant pursuant to Section 1094.5 of the Code of
18 Civil Procedure.